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THE RELEASE OF ONE JOINT TORT FEASOR AS A DISCHARGE TO THE OTHERS.

Under what circumstances the release of one joint tort feasor will operate as a discharge to the others is a question concerning which the courts of this country are not wholly in accord.

Upon three points there is general agreement: (1) Where the injured party accepts from one tort feasor a sum in satisfaction of his cause of action, this fact, whether recited in the release or not, is a complete discharge of those others who are or might be made parties defendant to the suit for damages. *Brown v. Cambridge*, 3 Allen 474; *Delong v. Curtis*, 35 Hun 94. (2) In those jurisdictions where sealed instruments possess their common law character, a release under seal made to one joint tort feasor releases all. The reason for the rule, as stated in *Ellis v. Esson*, 50 Wis. 138, is that "the meaning of such a release cannot be controlled by parol evidence, and the law raises a conclusive presumption that it was given in full satisfaction for the injury and for a sufficient consideration. *Urton v. Price*, 57 Cal. 270; *Rogers v. Cox*, 66 N. J. L. 432. (3) A covenant not to sue one of the joint tort feasors will not release the others. *Bailey v. Berry*, 3 Ohio Dec. 483; *Snow v. Chandler*, 10 N. H. 92; *Chicago v. Babcock*, 143 Ill. 358.

The real question upon which the courts are not agreed is whether a release of one joint tort feasor independent of the question of full satisfaction, releases the others. A leading case supporting the affirmative of this question is *Abb v. Railway Co.*, 28 Wash. 428. In that case a person injured by a collision between a passenger train and a street car accepted $300 and a pass from the street car company and executed a release, both parties to the transaction regarding this as a partial satisfaction only, but the court held that this release was a bar to an

action against the steam railway company. In an early Virginia case, *Ruble v. Turner*, 2 Hen. & Mun. 38, the court thus enunciated the rule: "The law says that if one joint tort feasor be released it shall bar a recovery against all the rest. The plaintiff can no more change the law, in this particular, by any subsequent proviso or condition than he could change the course of descents as prescribed by law." *Seither v. Phila. Traction Co.*, 125 Pa. 397, is perhaps authority for the above rule. The case of *Turner v. Hitchcock*, 20 Iowa 310, may be noted as illustrating to what extreme it has been carried. In that case a number of women had made a raid upon the plaintiff's saloon and damaged his property. Subsequent to this and prior to beginning a suit for damages, plaintiff married one of the women. The court held that here was discharge by operation of law, that the intermarriage between the plaintiff and one of the tort feasors being a release to the one was a release to all. There was a dissenting opinion, concurred in by another judge.

In the recent case of *Robertson v. Trammell*, 83 S. W. 258 (Tex.), where the facts were similar to those in *Abb v. Railway Co.*, *supra*, it was held that "where an injured person accepted money from one of several joint tort feasors and dismissed as to him, and executed a release to him only, which did not show a release of the cause of action itself or full satisfaction of the claim for damages, such release did not discharge the other joint tort feasors. So in *Mail Co. v. Barnes*, 79 S. W. 261, decided by the Courts of Appeals of Kentucky, it was said: "It is not the intention of the law to force people into litigation and prevent settlements out of court. . . . If ten persons committed a joint tort and injured a person to the extent of $1,000 and nine of them recognized that fact, and were willing to pay $100 each for the purpose of remunerating the injured person, and the tenth man refused to pay his $100, according to the appellant the injured party could not accept the $900 in part satisfaction and sue the stubborn tenth man. He would plead the settlement as a satisfaction and a bar. Such a construction of the law would be unreasonable and unjust." So in *Bloss v. Plymale*, 3 W. Va. 409, the rule laid down in *Ruble v. Turner*, *supra*, was denied and the court held that if damages are satisfied in part by payment or compromise with some of the defendants, plaintiff may still proceed against the others. Supporting this doctrine are the cases of *Sloan v. Herrick*, 49 Vt. 328, and *Lovejoy v. Murray*, 3 Wall. 1.

There is a tendency in some of the courts to allow the intention of the parties to govern the extent to which a release may be given effect. *Sloan v. Herrick*, *supra*; *Ellis v. Esson*, 50 Wis. 138; *Irvine v. Milbank*, 15 Abb. Pr. N. S. 378.

NOTICE AS APPLIED BETWEEN SUCCESSIVE ENCUMBRANCERS OF PERSONALTY.

The question of necessity of notice, as between successive encumbrancers of personal property and the debtor, with refer-